

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

UNITED STATES OF AMERICA    )  
  )  
                          v.                    )    **2:12-cr-235-AKK-HGD**  
  )  
AHMAD RAHIMINEJAD            )

**GOVERNMENT’S RESPONSE TO DEFENDANT’S SENTENCING  
MEMORANDUM AND MOTION FOR DOWNWARD  
DEPARTURE/VARIANCE**

COMES NOW the United States of America, by and through United States Attorney Joyce White Vance and Assistant United States Attorney Davis Barlow, and responds to the Defendant Ahmad Rahiminejad’s Sentencing Memorandum and Incorporated Motion for Downward Departure/Variance. (Doc. 11.)

The Defendant cites several cases wherein the defendants received lesser sentences for similar violations; however, those cases are distinguishable. The sentence imposed in *U.S. v. Spahn*, 2:03-cr-628-RBP-RRA, was subject to a motion for downward departure filed by the Government. In *U.S. v. Satterfield*, 2:02-cr-216-CLS-RRA, the defendant was sentenced to 6 months in the custody of the Bureau of Prisons with the recommendation that he be housed in the local Community Corrections Center. Further the restitution the defendant was ordered to pay to the

I.R.S. was \$11,606.00, which was the tax loss for tax year 1997 - a far cry from Rahiminejad's tax loss of \$446,693.00. The Defendant also relies on *U.S. v. Hilyer*, 2:01-cr-476-ELN-PWG to support a lesser sentence; however, the additional unreported income in *Hilyer* was approximately \$70,000.00 - much less than Rahiminejad's unreported income of \$1,360,515.00. Finally, the sentence imposed by the district court in *U.S. v. Ciccolini*, 750 F.Supp.2d 850 (N.D. Ohio 2010), also relied on by the Defendant, was vacated on appeal and the case has been remanded for resentencing. See *U.S. v. Ciccolini*, 2012 WL 2545802 (6<sup>th</sup> Cir. July 3, 2012).

Some more recent tax cases the Government wishes the Court to consider would include *U.S. v. Franklin*, 2:12-cr-49-AKK-JEO, wherein the defendant was sentenced to fifteen (15) months in custody on a tax loss of approximately \$34,000.00, and *U.S. v. Woodman*, 2:10-cr-463-LSC-TMP, wherein the defendant was sentenced to thirty-six (36) months for under reporting her gross income by approximately \$237,000.00 over a three year period.

The Defendant seeks a downward departure due to his physical condition. The Guidelines correctly point out that, “[a]n extraordinary physical impairment may be a reason to depart downward. . .” U.S.S.G. § 5H1.4. The Government submits that the Defendant's physical condition is not a physical impairment that is so extraordinary that it should result in a downward departure. Further the Government

notes the Defendant's physical impairment did not prevent him from operating multiple businesses from which he derived his income that is the basis of this criminal case.

The Defendant also seeks a variance due to the fact that he is making extraordinary restitution. Per the terms of the Plea Agreement, the Defendant agreed to pay restitution in the amount of \$446,693.00, which represents the additional tax owed for tax years 2006-2009. (Doc. 3.) As noted in *U.S. v. Kim*, 364 F.3d 1235, 1242 (11<sup>th</sup> Cir. 2004), extraordinary restitution is a discouraged factor for departure. The purpose of restitution is to make the victim whole, in this case, the general public who benefit from the services funded by tax revenue. Allowing a variance due to the Defendant's ability to pay sends the wrong message to the public - that a person can buy their way out of a prison sentence.

The Government does not believe a downward departure or variance is warranted. The Government maintains its recommendation of a sentence of 27 months of imprisonment, a low-end Guidelines sentence.

**{Signatures contained on the following page.}**

Respectfully submitted this the 30<sup>th</sup> day of October 2012.

JOYCE WHITE VANCE  
United States Attorney

/s/ Davis A. Barlow  
DAVIS A. BARLOW  
Assistant United States Attorney  
1801 Fourth Avenue North  
Birmingham, Alabama 35203  
(205) 244-2134

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been electronically filed with the Clerk of Court, Northern District of Alabama, on this 30<sup>th</sup> day of October 2012, using the CM/ECF filing system which will send notification of said filing to all counsel of record.

/s/ Davis A. Barlow  
DAVIS A. BARLOW  
Assistant United States Attorney  
1801 Fourth Avenue North  
Birmingham, Alabama 35203  
(205) 244-2134